

# **EXHIBIT C**

**ORAL ARGUMENT NOT YET SCHEDULED****IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

CITY OF PORT ISABEL, *et al.*,

*Petitioners,*

v.

FEDERAL ENERGY  
REGULATORY COMMISSION,

*Respondent,*

RIO BRAVO  
PIPELINE COMPANY, LLC, *et al.*,

*Respondent-Intervenors.*

No. 23-1174

**DECLARATION OF MEGAN BEHREND**

I, Megan Behrends, hereby depose and state that I am over the age of 18 and am in all respects competent and qualified to make this Declaration. All facts stated are within my personal knowledge and are true and correct.

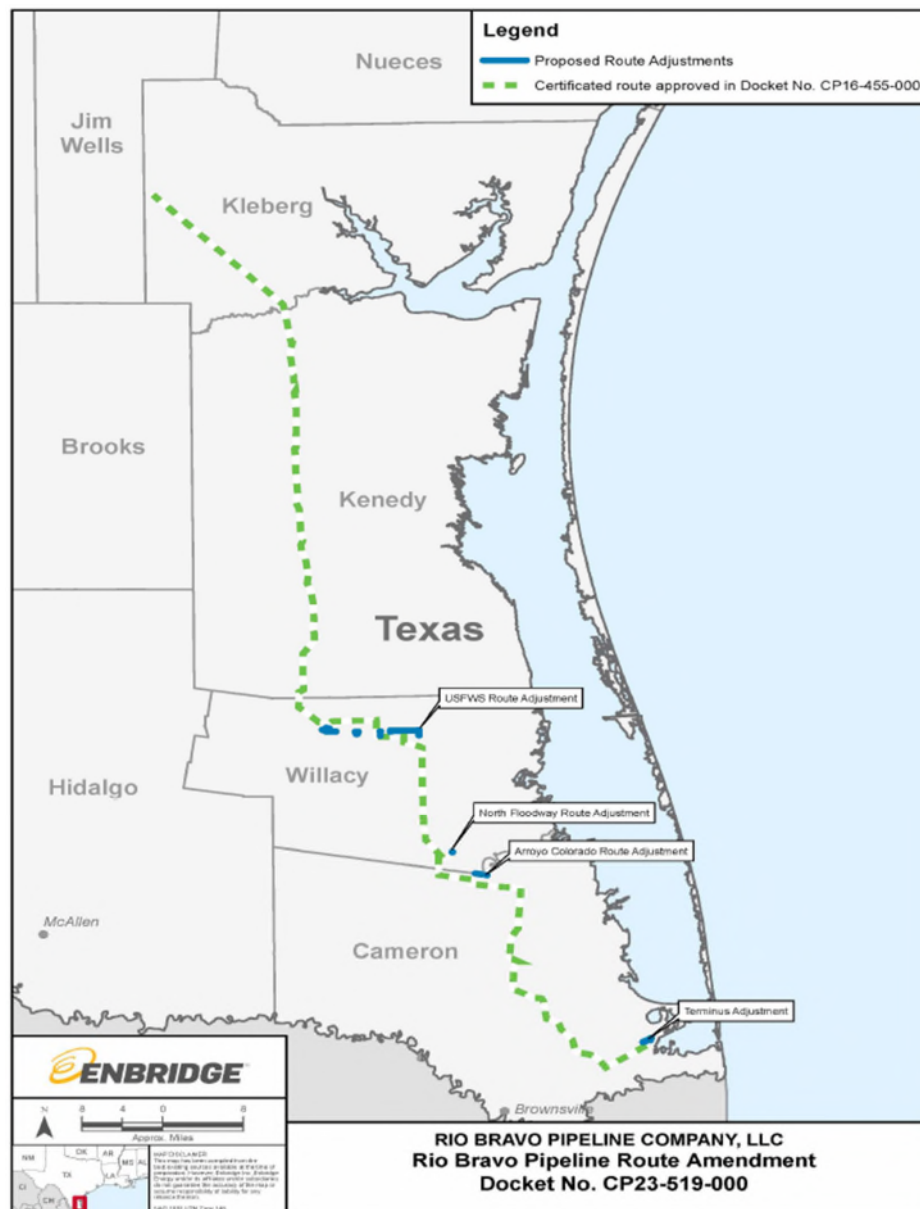
1. I am currently the Project Manager for the Rio Bravo Pipeline Project (the “Pipeline Project”), which will be constructed and operated by the Rio Bravo Pipeline Company, LLC (“Rio Bravo”). Rio Bravo is an indirect, wholly owned subsidiary of Enbridge Inc. I have worked at Enbridge since October 2008 and have served in my current role since April 2023.

2. In my current position, I am responsible for overseeing all construction, engineering, environmental, and land functions for the Pipeline Project. Among other things, I am responsible for ensuring that all construction and engineering is accomplished safely, effectively, on schedule, and in accordance with applicable regulations, permits, and contracts. As a result, I am knowledgeable regarding the progress made on the planning and design of the Pipeline Project to date, ongoing work to advance development of the project, the current construction schedule, and the potential effects that a judicial stay would have with respect to Rio Bravo's plans to complete construction of the Pipeline Project.

#### **I. The Pipeline Project**

3. The Rio Bravo Pipeline will connect existing systems in Kleberg and Jim Wells Counties, Texas, to the proposed Rio Grande LNG, LLC ("Rio Grande") liquefied natural gas terminal (the "LNG Terminal") in Cameron County, Texas. Construction of the Pipeline Project is scheduled to begin in mid-2025 and last approximately one year, with an in-service date of August 2026. When complete, the Pipeline Project will connect the LNG Terminal with existing natural gas infrastructure in Texas. When fully completed and operational, the Pipeline Project will provide the LNG Terminal with approximately 4.5 billion cubic feet per day of natural gas transportation capacity.

4. The Pipeline Project will consist of an approximately 2.4-mile header system, approximately 137.3 miles of dual mainline pipelines, one compressor station, six receipt meter stations, and one delivery station. The Pipeline Project will traverse Jim Wells, Kleberg, Kenedy, Willacy, and Cameron Counties, Texas. The following map shows the Pipeline Project's expected route.



## II. Status of Authorizations and Permits for Construction of the Pipeline Project

### A. Federal Energy Regulatory Commission

5. In 2019, after more than three years of review, the Federal Energy Regulatory Commission (“FERC”) authorized construction and operation of Rio Bravo’s Pipeline Project, and Rio Grande’s LNG Terminal. *Rio Grande LNG, LLC*, 169 FERC ¶ 61,131 (2019) (the “Authorization Order”). FERC’s order states that “the public convenience and necessity require approval and certification of [the Pipeline Project] . . . under section 7 of the Natural Gas Act” and that “the Rio Grande LNG Terminal is not inconsistent with the public interest.” *Id.* PP 32, 133. The Authorization Order enumerates expected benefits of the Pipeline Project and LNG Terminal. The Authorization Order also states that the Pipeline Project will have “minimal adverse impacts on . . . landowners and surrounding communities” and concludes that the environmental impacts of the Terminal and Pipeline “would be reduced to less-than-significant levels with the implementation of . . . avoidance, minimization, and mitigation measures.” *Id.* PP 32, 56.

6. While an appeal of the Authorization Order was pending, Rio Bravo filed an application with FERC to amend its certificate authorization (the “Amendment Application”). Rio Bravo sought to implement certain design changes intended to improve the hydraulic efficiency of the pipeline, decrease the pipeline’s above-ground footprint, and decrease overall Pipeline Project emissions. Following

an additional environmental review, FERC issued an order approving the Amendment Application, which stated that FERC’s “approval of the Amendment Project proposal would not constitute a major federal action significantly affecting the quality of the human environment.” *Rio Grande LNG, LLC*, 183 FERC ¶ 61,046 P 79 (2023). FERC further stated that “the public convenience and necessity requires approval of Rio Bravo’s request [to] . . . amend the [Natural Gas Act] section 7 certificate authorization issued by the Authorization Order.” *Id.* P 80.

7. In July 2023, Rio Bravo submitted another application to FERC (the “Second Amendment Application”), seeking approval for four minor route adjustments, designed, among other things, to limit impacts on ocelot habitat, address agency and landowner concerns, avoid recently constructed infrastructure, enhance safety, and reduce environmental effects. That application remains pending at FERC.

#### **B. Endangered Species Act Biological Opinion**

8. In October 2019, following years of review, the U.S. Fish and Wildlife Service issued a Biological Opinion for the Pipeline Project pursuant to the Endangered Species Act. The Fish & Wildlife Service subsequently issued certain amendments and an addendum to that Biological Opinion.

9. In January 2023, Rio Bravo initiated discussions with the Fish & Wildlife Service to discuss potential minor modifications to the pipeline route. In

August 2023, the Fish & Wildlife Service issued a “Not Likely To Adversely Affect” determination to FERC in connection with Rio Bravo’s Second Amendment Application, specifically addressing the change of the pipeline route to reduce impacts on potential ocelot habitat. Rio Bravo is engaged in ongoing discussions with the Fish & Wildlife Service.

**C. Authorization Under the Clean Water Act and the Rivers and Harbors Act**

10. In May 2018, Rio Grande and Rio Bravo filed a permit application with the U.S. Army Corps of Engineers (the “Corps”) pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. In February 2020, the Corps granted that application and issued Permit No. SWG-2015-00114. Rio Grande and Rio Bravo subsequently asked the Corps to amend the permit in light of certain design modifications and enhancements, and the Corps approved the modified design in 2021. Rio Bravo anticipates that it may have future discussions with the Army Corps regarding a minor route adjustment pursuant to Section 14 of the Rivers and Harbors Act, in connection with crossing the Arroyo Colorado.

**D. National Historic Preservation Act**

11. In 2016, Rio Bravo began consulting with the National Park Service and Texas Historical Commission regarding potential impacts on historic resources pursuant to Section 106 of the National Historic Preservation Act. In 2016 the Texas State Historic Preservation Officer concurred with the findings of Rio Bravo’s

cultural survey report, and in January 2020, the Park Service concluded the consultation process. Rio Bravo subsequently submitted supplemental information regarding the amended project, and in May 2023, the State Historic Preservation Officer concurred with the information provided by Rio Bravo.

#### **E. Ongoing Permitting and Authorization Work**

12. Rio Bravo remains actively engaged with certain federal and state agencies regarding applicable consultation processes and remaining authorizations for the Pipeline Project. Among other things, and as noted above, Rio Bravo remains engaged in ongoing discussions with the Fish & Wildlife Service, and anticipates that it may have further discussions with the Corps related to a potential minor route adjustment.

13. Prior to beginning construction, Rio Bravo will submit a Clean Air Act application for standard permits and a revised Title V Operating permit application to the Texas Commission on Environmental Quality. Rio Bravo is continuing consultations with the Texas Parks and Wildlife Department pursuant to certain provisions of Texas state law.

### **III. Pipeline Project Construction Schedule and Sequencing**

14. In addition to ongoing efforts to secure all necessary permits and complete applicable consultations for construction and eventual operation of the Pipeline Project, Rio Bravo has been engaged in active efforts to finish design and

development work for the Project's pipelines, compressor equipment, and metering and regulating stations, in anticipation of beginning construction. For instance, Rio Bravo has begun procuring relevant Project materials (e.g., pipeline, valves, compressor components). Rio Bravo recently executed a contract with an Engineering, Procurement and Construction contractor, for the Pipeline's compressor station. Rio Bravo is currently soliciting bids for certain valve equipment, and is awaiting receipt of certain "long lead" items (i.e., items that must be ordered a long time in advance) from its vendors. In mid-2024, Rio Bravo anticipates that it will begin negotiating labor contracts for the construction of pipelines and metering and regulating station facilities, with the goal of finalizing those construction contracts in early 2025.

15. Pipeline design and development occurs in a linear fashion. Some tasks (e.g., refinement of design and specifications) must be completed before others (e.g., procurement of pipe or land acquisition) can occur. Therefore, delays at one stage of the process can have cascading effects on overall project timing.

16. Construction of the first pipeline, compressor station, and metering and regulating station is scheduled to commence in May 2025. Pipeline construction also proceeds in a linear, sequential fashion after completion of the required pipeline design and development and land-rights acquisition: surveying and marking the right of way; building facilities needed for temporary construction access (e.g.,

gravel routes to access properties from public roads, temporary bridges to protect sensitive areas); clearing activities along the pipeline route; grading the pipeline right-of-way; excavating the pipeline trench; bringing segments of pipe to the property; bending the pipe to the shape of the ground; welding the pipe segments together; placing the pipe in the trench; backfilling the trench; and re-grading and restoring the surface. Delays in beginning or undertaking initial phases of work will necessarily delay Rio Bravo's ability to begin or complete work on later tasks, such that initial delays can have cascading effects on overall project timing. Construction of the pipeline header system is scheduled to begin in July 2025 and to be completed in approximately nine months. Rio Bravo currently plans to complete construction and commissioning of the first pipeline and compressor station, and to place the initial facilities into service, by August 2026.

#### **IV. A Stay of the FERC Authorization Will Harm Rio Bravo and Disserve the Public Interest**

17. Planning and design of the Pipeline Project must continue expeditiously, and in accordance with the schedule outlined above, for the pipeline to begin construction in May 2025 and be completed by the August 2026 in-service date. Although construction is not scheduled to commence for another 15 months, a stay of the Pipeline's FERC authorization would interrupt ongoing work of obtaining and finalizing permits, designing the pipeline, and procuring materials, with cascading, non-linear effects on the timing of Project completion. Those effects would cause

significant financial, practical, and reputational harms, with Rio Bravo potentially incurring contractual damages associated with delay and, if delays extend past the current in-service date, lost revenue. If the FERC authorization for the Pipeline were stayed, even temporarily, Rio Bravo will incur substantial unrecoverable costs.

18. As of January 31, 2024, Rio Bravo has incurred approximately \$49 million, and has committed to spend an additional approximately \$338 million, on permitting, developing, environmental mitigation, right-of-way acquisition, and material procurement for the Pipeline Project.

19. A stay of the FERC authorization would likely disrupt Rio Bravo's ongoing design and procurement process. Without a valid FERC authorization, Rio Bravo may be limited in its ability to complete certain necessary tasks, or to complete them in the planned manner. For instance, without a valid FERC authorization, Rio Bravo may be unable to access land along the right-of-way to complete certain species or other environmental surveys that are required to occur during specific time periods (e.g., seasonal windows). In addition, without an effective FERC authorization, Rio Bravo could lack authority to accept delivery of certain materials on or along the pipeline right-of-way; instead, Rio Bravo could be forced to incur additional expense to delay delivery of these materials, with costs exceeding \$50,000 per month, or make other arrangements. A prolonged stay of the FERC

authorization's validity could force Rio Bravo to cancel existing contracts outright, resulting in unrecoverable financial losses of \$150 million as of January 31, 2024.

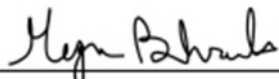
20. Ultimately, a prolonged stay of effectiveness of the Pipeline Project's FERC authorization could cause Rio Bravo to miss the August 2026 in-service date, potentially jeopardizing the project and resulting in Rio Bravo losing or deferring substantial revenue.

21. If a stay of effectiveness of Rio Bravo's FERC authorization delays the in-service date for the Pipeline Project or interferes with the commissioning or entry into service of the LNG Terminal, it would cause broader harms to the public interest. With respect to the Pipeline Project in particular, FERC has identified significant expected benefits, including increased tax revenues, job creation, and economic benefits to communities along the pipeline route. In addition, the Pipeline Project, together with the LNG Terminal, will provide domestic natural gas producers with access to critically important export markets and improve the country's balance of trade.

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22. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 12, 2024

  
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Megan Behrends